

IN THE FIJI COURT OF APPEAL

Criminal Appeal No. 23/90

21

BEFORE THE HON JUSTICE MICHAEL M HELSHAM

PRESIDENT OF THE FIJI COURT OF APPEAL

AND THE HON SIR MOTI TIKARAM

RESIDENT JUDGE OF APPEAL

AND THE HON MARI KAPI

JUDGE OF APPEAL

THURSDAY THE FIFTH DAY OF MARCH, 1992 AT 2. P.M.

BETWEEN:

LOTE RATU

APPELLANT

-v-

S T A T E

RESPONDENT

MR LOTE RATU

IN PERSON

MS N SHAMEEM &
MS S KAIMACUATA

FOR THE RESPONDENT

JUSTICE M HELSHAM : On the 31st of October, 1989, some persons, at least three, probably five or six robbed one Dewan Chand, who was the Managing Director of a bus company, of the week's takings at the bus station.

He had put the money in the boot of his car where there were already two bottles of rum. The money had been sorted by him and the coins had been wrapped in the National Bank paper coin wrappers. It had all been placed in white fabric bags with the bus company's stamp on the inside of it. The total amount was \$13,626.00. The time was about five minutes to eight at night.

As he was about to get into his car, these five or six people came rushing at him. They were carrying some weapons, knives or axes or both and they also armed themselves with a number of stones which they threw. Their faces were covered. They tried to break into the car and one might think very wisely, the Managing Director told them that the money was in the boot. They broke it open and took the money bags and the rum.

At about 9,30 that same evening there was evidence from two witnesses that the accused, who was known to them, and three others came to the house where the two witnesses were living with bags similar to the ones that had been stolen. The money was taken out of wrappers similar to the wrappers holding the money when it was placed in the bags, placed on the ground, the wrappers were removed and the accused distributed the money between the four of them.

: He then rewrapped the money, presumably his portion, in the same wrappers, gave some to the two witnesses who were present and the four of them went away.

Later on the police discovered a wrapper similar to those which had been used and an empty bottle of rum similar to the ones stolen, at the accused house. There was other evidence on which it was proper for the assessors to rely, circumstantial evidence implicating the accused.

The accused was charged with the offence of Robbery With Violence. He pleaded not guilty. He was convicted and sentenced to four and a half years imprisonment. There is more than ample evidence to support his conviction.

In support of his appeal to this court against conviction and sentence, he has lodged a number of grounds of appeal. So far as those relating to conviction are concerned, this court does not think it necessary to refer to any of them except one. The others are specious and have no substance and no merit whatsoever.

The one that it maybe desirable to refer to is that set out on page 2(a) of the record in the first paragraph, namely, that the learned trial judge erred in law by perusing for himself the evidence "filed in my case prior to the trial as can be confirmed in page 54 of case record, line 22, where he asked me -

"Where is the watch that you bought at Prouds?"

The judge did ask this question. It arose in this way. At page 37 of the record, there is the evidence of the interview which was

: with the accused by the investigating police officer. The relevant portion is -

" Q. You interviewed him in the Fijian language?

A. That is right.

Q. This interview was under caution?

A. That is right.

Q. And you made a record of the Fijian interview?

A. That is right.

Q. You later prepared an English translation?

A. That is right.

Q. (Witness shown original Fijian translation).

Can you tell us if this is the original Fijian interview you took of this accused?

A. Yes.

Q. And the English translation?

A. That is right.

Q. Can you read the original Fijian translation out?

A. (Witness reads.)"

The statement itself, neither the Fijian nor the English version, appears to have been tendered in evidence. It contained this portion which is to be found at page 90 of the record at the bottom of the page. And it is question 41 on page 90 and answer.

Q41 : Where did you bring the wrist watch you were wearing?

A : I bought it from Prouds in Suva, at Thomson Street, I had been wearing it for the last 4 months, including this trousers which I bought for the last two weeks.

I am instructed by the learned Deputy Director of Public Prosecutions, who was the prosecuting officer at the trial, and I am informed that it is the practice that where evidence is read or given in Fijian, there is a translation immediately by an interpreter.

: And I am informed by her that that occurred on this occasion. So that the evidence available to enable the judge to ask the question that he did was before the court. And it matters not whether that information was obtained from elsewhere. Whatever may have been the position, there was certainly no miscarriage of justice.

The court will dismiss the appeal against conviction.

On the matter of sentence, it was proper for the trial judge to deal with the matter as though the accused was, as he said, the ringleader of this crime. It was also proper to note at that stage that there were two other accomplices who both had pleaded guilty to the same offence. The learned judge sets out the reasons for imposing the sentence for four and a half years in the third paragraph on page 2. It is as follows -

" The second accused is a first offender who too promptly pleaded guilty. But he is a mature man of 28 years. It is my view that for an offence of the present gravity and magnitude he should be made to taste prison life even for a short period so that he may learn that crime does not pay. I impose on him a sentence of imprisonment for 18 months."

We see no reason to depart from it or to disagree with any portion of it. The appeal against conviction will likewise be dismissed. In the result the appeal is dismissed.

Michael Lee Lee
President